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of the case.**

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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF C.O.M., A Child In Need	)	
of Services	)	
	)	
TAMMY OLSEN,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A04-0606-JV-349
	)	
MARION COUNTY DEPARTMENT OF	)	
CHILD SERVICES,	)	
	)	
Appellee-Petitioner,	)	
	)	
and	)	
	)	
CHILD ADVOCATES, INC.	)	
	)	
Co-Appellee/Guardian ad Litem.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Geoffrey Gaither, Magistrate  
Cause No. 49D09-0602-JC-6220

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**April 17, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Judge**

Tammy Olsen appeals the trial court's determination that her youngest child, C.O.M., is a Child in Need of Services ("CHINS"). Olsen raises one issue on appeal, which we revise and restate as whether there was sufficient evidence to support the trial court's determination that C.O.M. was a CHINS. We affirm.

The relevant facts follow. Olsen had five children that were removed from her custody at various times prior to the birth of C.O.M. on February 10, 2006. Because Olsen had an open CHINS case, the Marion County Department of Child Services ("MCDCS") received a referral from Wishard Hospital on February 11, 2006, reporting that Olsen had given birth to C.O.M. C.O.M. was immediately placed in foster care, and the MCDCS initiated an investigation, headed by Family Case Manager Investigator, Nicolle Freeman.

In 2005, Olsen had attempted suicide and left her four-year-old child at home alone. Following this incident, none of Olsen's children were in her care. It was determined that Olsen suffers from borderline personality disorder. Olsen concedes that, at the time of C.O.M.'s birth, she "was not in compliance with the plan of rehabilitation" in her ongoing CHINS case. Appellant's Brief at 4.<sup>1</sup> Olsen had been ordered to receive

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<sup>1</sup> Counsel for both sides cite to the transcript in their briefs. However, there is no transcript of the proceedings in this case, as the trial court did not record the proceedings. Verified statements of evidence

mental health treatment to address her suicide attempt and to act on her diagnosis of borderline personality disorder. Olsen failed to complete those services.

Ronald Moore is the alleged biological father of C.O.M.<sup>2</sup> Freeman confirmed during her investigation that Moore was living with Olsen. There is a history of domestic violence between Olsen and Moore. Olsen was arrested in July of 2005 for battery after she threw an ashtray at Moore.

During her investigation, Freeman conducted a home visit and determined that Olsen's home was not ready for her children to return to her care. Freeman noted that, although Olsen's home was tidy, it contained a soot-covered, unassembled crib, one package of diapers, one package of wipes, no bottles, clothing, bedding, or other necessary supplies. Freeman determined that:

Due to Tammy Olsen's admitted lack of participation in services referred based on her mental health disorders and lack of parenting skills, prior abuse and neglect of her other children, domestic violence between [Olsen] and [Moore], the MCDSCS feels that [C.O.M.] is in need of services.

Appellant's Appendix at 24.

On February 14, 2006, the MCDSCS filed its CHINS petition as to C.O.M. In its petition, the MCDSCS alleged:

On or about February 13, 2006, the Marion County Department of Child Services (MCDSCS) determined by its Family Casemanager (FCM), Nicolle Freeman, that [C.O.M.] is a child in need of services because his mother

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were provided by relevant parties. Where possible, we will cite to these certified statements of the evidence instead of to the briefs of the parties. We note, however, that the pages of these statements were not numbered.

<sup>2</sup> Bryon Olsen is the legal father of C.O.M. as he and Olsen are still married. They have not lived together for several years, and Bryon Olsen has shown no interest in caring for C.O.M.

and legal custodian, Tammy Olsen, is unable to provide the child with a safe and stable home. Ms. Olsen has an open CHINS [case] with MCDCS concerning an older child. [Olsen] has failed to cooperate with and complete the court ordered rehabilitative services under the open CHINS [case], has untreated mental health issues, and lacks the adequate supplies to accommodate [C.O.M.]. At this time, [C.O.M.] would be endangered in [Olsen's] care and the family is in need of rehabilitative services.

Id. at 17.

A fact-finding hearing was held on June 13, 2006. Freeman was the sole witness to testify. The trial court determined that C.O.M. was a CHINS and ordered that C.O.M. be removed from Olsen's care. In its judgment, the trial court found:

\* \* \* \* \*

The Court having heard the statements and considered the file and facts in this matter, now finds [C.O.M.] to be in need of services. The Court finds by [a] preponderance of the evidence by trial that [C.O.M.] is in need of services.

The Court finds that reasonable efforts have been offered and available to prevent or eliminate the need for removal [of C.O.M.] from the home. After reviewing the reports and information from the [MCDCS], service providers[,] and other sources, which the Court now incorporates into this order (see Court file), the Court also finds that the services offered and available have either not been effective or [not] been completed that would allow the return home of [C.O.M.] without Court intervention.

The Court finds that it is contrary to the health and welfare of [C.O.M.] to be returned home and that reasonable efforts have been made to finalize a permanency plan for [C.O.M.][.]

The Court orders [C.O.M.] to be a ward of the [MCDCS]. The Court orders that the responsibility for placement and care of [C.O.M.] is ordered to the [MCDCS], with placement at: continued in foster care.

The Court now orders [C.O.M.] removed from the care of the mother, Tammy Olsen[,], pursuant to this Dispositional Order.

\* \* \* \* \*

Id. at 45-46.

The sole issue here is whether there was sufficient evidence to support the trial court's CHINS determination. Specifically, Olsen argues that the trial court erred in not requiring the MCDCS to use individualized proof in determining that C.O.M. should be found a CHINS instead of basing its determination on the fact that Olsen had an open CHINS case.

Ind. Code § 31-34-19-10 requires the trial court to issue findings with any dispositional decree. Although the trial court's findings were not very detailed here, they are still considered to be findings. "When reviewing such findings and conclusions, case law states that we first determine whether the evidence supports the findings, and second, whether the findings support the judgment." In re T.H., T.H., Jr., 856 N.E.2d 1247, 1250 (Ind. Ct. App. 2006) (internal citations omitted). "In practical terms, however, we may look first to determine whether the judgment is supported by the findings. If it is not so supported, our review is concluded." Id. "We will reverse a judgment only if it is clearly erroneous. A judgment is clearly erroneous if it is unsupported by the findings of fact and conclusions entered on those findings." Id.

Olsen correctly points out that "the right to raise one's children without State interference is protected by the United States and Indiana Constitutions." Appellant's Brief at 6.

The United States Supreme Court has recognized that the relationship between parent and child is constitutionally protected. Specifically, the Court has ruled that the Due Process Clause of the Fourteenth Amendment protects freedom of personal choice in family life matters. This court has

interpreted this protected freedom of choice to include the parent's fundamental right to raise [his or] her child without undue interference by the state. This right is not unlimited, however, as the state has a compelling interest in protecting the welfare of children. When the parents neglect, abuse, or abandon their children, the state has the authority under its *parens patriae* power to intervene.

In the Matter of E.M., 581 N.E.2d 948, 952-53 (Ind. Ct. App. 1991) (internal citations omitted), trans. denied. *Parens patriae* “allows the court the power to step into the shoes of the parents.” In re K.G., 808 N.E.2d 631, 635 (Ind. 2004) (internal citations omitted). “Children, by definition, are not assumed to have the capacity to take care of themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae*.”

Ind. Code § 31-34-1-1 governs the CHINS determination and provides:

A child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and
- (2) the child needs care, treatment, or rehabilitation that:
  - (A) the child is not receiving; and
  - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

The MCDSCS had the burden of proving by a preponderance of the evidence that C.O.M. was a child in need of services according to the above statute. See Ind. Code § 31-34-12-3 (2004); 856 N.E.2d at 1250; 581 N.E.2d at 952.

Olsen argues that the MCDCS did not provide individualized proof that C.O.M. was a CHINS, but rather based its determination on Olsen's ongoing CHINS case. We disagree. MCDCS, upon receiving the report that Olsen had given birth to C.O.M., conducted an investigation separate and apart from her ongoing CHINS case.

"Ind. Code § [31-34-1-1] provides that a child is in need of services when it is endangered by parental action or non-action. Under that provision, the [MCDCS] and the court need not wait until a tragedy [sic] occurs or the children are irretrievably ruined by a parent who is out of control in order to take action." Parker v. Monroe County Dept. of Public Welfare, 533 N.E.2d 177, 179 (Ind. Ct. App. 1989).

Here, there were no allegations of neglect of C.O.M. However, the MCDCS's investigation provided information indicating that the reasons for the removal Olsen's other five children still existed. Olsen's mental health issues, which led to her previous attempted suicide, had gone untreated. Olsen had failed to successfully complete state-provided services in her ongoing CHINS case, including parenting classes and mental health treatment services. In addition, there was an incident of domestic violence between Olsen and Moore, the alleged father, in July of 2005. Moreover, Moore was living in Olsen's home at the time C.O.M. was born. Further, although Olsen's home was tidy, there was a soot-covered, unassembled crib in the home, one package of diapers, one package of wipes, no bottles, clothing, bedding, or other necessary supplies.<sup>3</sup>

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<sup>3</sup> Olsen argues that her borderline personality disorder diagnosis should not "automatically render [her] incapable of properly raising [C.O.M]." Appellant's Brief at 9. However, a review of the record indicates that Olsen's mental health issues were not the sole determinant in the decision to remove

The evidence was sufficient to demonstrate that C.O.M.'S "physical or mental condition" is "seriously endangered," that C.O.M. needed "care, treatment, or rehabilitation" that C.O.M. was not receiving and was "unlikely to be provided . . . without the coercive intervention of the court." See, e.g., In re K.B., 793 N.E.2d 1191, 1196 (Ind. Ct. App. 2003). We affirm the trial court's judgment that C.O.M. is a CHINS. See, e.g., Parker, 533 N.E.2d at 179 (holding that the court does not have to wait until a tragedy occurs or parents actions irretrievably ruins the child in order to take action).

For the foregoing reasons, we find that there was sufficient evidence on which the trial court could base its determination that C.O.M. was a CHINS.

Affirmed.

MAY, J. and BAILEY, J. concur

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C.O.M. from her care. Rather, the decision was based on Olsen's mental health issues, her failure to address those issues, her failure to participate and cooperate in state-provided services, including mental health treatment services and parenting classes, domestic violence in the home, and her inability to provide necessities for C.O.M.